

VZCZCXRO3161
OO RUEHDE RUEHROV RUEHTRO
DE RUEHNR #1348/01 1820831
ZNR UUUUU ZZH
O 010831Z JUL 09
FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC IMMEDIATE 0069
INFO RUCNSOM/SOMALIA COLLECTIVE PRIORITY
RHEHNSC/NSC WASHDC
RUEKDIA/DIA WASHDC
RUEAIIA/CIA WASHDC
RHMFIUU/CJTF HOA
RUZEFAA/CDR USAFRICOM STUTTGART GE
RUZEFAA/HQ USAFRICOM STUTTGART GE
RHMCSUU/CDR USCENTCOM MACDILL AFB FL

UNCLAS SECTION 01 OF 03 NAIROBI 001348

SIPDIS

AIDAC

DEPT FOR AF/E AND A/S CARSON

E.O. 12958: N/A

TAGS: [EAID](#) [PGOV](#) [PREL](#) [KDEM](#) [SO](#)

SUBJECT: SOMALIA - Constitution Drafting Process Re-Energized

Summary

¶1. On June 4, a consortium of partners supporting Somalia's constitutional process met with the Transitional Federal Government (TFG) Minister of Constitutional and Federal Affairs Madobe Nunow Mohamed to discuss priorities and outstanding needs in the constitutional development process. Minister Mohamed described a grassroots outreach initiative to involve all Somalis in the country and abroad in developing the constitutional structures that will set the stage for Somalia's political transition. The ministry will work in partnership with the Independent Federal Constitutional Committee (IFCC) to lead the drafting process. While we are understandably focused on immediate security priorities, it is no less important to support immediate and longer-term efforts to build permanent governing institutions. Absent any other nation-wide mobilization efforts, the constitutional process could, if properly administered, foster public support for the TFG. It remains a critical peace building tool that will encourage public participation and ongoing reconciliation in Somalia. End Summary.

Urgent Need to Build Legitimacy
Of the Constitutional Process

¶2. While the TFG has been focused on the immediate priority of establishing security, it also recognizes the importance of focusing on medium and longer-term efforts to ensure a political transition to a permanent government. The Transitional Federal Charter identifies the drafting of a constitution as a key task for the transition. The Charter prescribes that a new federal constitution must be drafted and adopted by popular referendum before the final year of the transitional period. Eighty percent of the proposed text has already been drafted using the 1960 constitution, the 1990 constitution, and the Charter as a basis. The remaining twenty percent of the narrative will revolve around issues that have historically been more contentious in Somalia - such as Sharia Law and federalism - and which will have to be openly debated and discussed if the constitution is to be legitimate.

¶3. Because Somalia lacks a judiciary, the ability of the constitution to serve as law of the land will initially be entirely a function of its perceived legitimacy - both by political elites and by broader Somali society. There is therefore an urgent need for a broad-based, participatory and consultative drafting process to generate buy-in for the constitution and to help marginalize spoilers of the political process. Finalizing the constitution will be the first step in completing the legal framework necessary for

the transition to a permanent government.

Ministry Priorities

¶4. On June 4, a consortium of partners supporting Somalia's constitutional process met with TFG Minister of Constitutional and Federal Affairs Mohamed. The Minister described a grassroots process through which every Somali will have an opportunity to participate in the consultative process. Minister Mohamed identified the following priorities for his ministry:

- Continue consultations with constitutional and development experts to better prepare the ministry for its responsibilities;
- Prepare and pass legislation to establish bodies to work on specific aspects of constitutional development, e.g., Commission for Censorship;
- Reorganize the IFCC;
- Conduct public outreach activities;
- Incorporate public feedback into the constitution;
- Encourage existing regional governments to develop their own ideas about the constitution;
- Encourage areas currently without any local government to begin establishing local governance structures that can represent them in this process;
- Continue negotiations with some regional governments on the future design of the federal system.

Ministry Activities

NAIROBI 00001348 002 OF 003

¶5. Minister Mohamed identified the following activities his ministry plans to undertake to support the above priorities:

- Visit regions in Somalia (security conditions permitting) and countries with large Somali diasporas to gather feedback on the process;
- Attend the United Nations Political Office for Somalia (UNPOS) conference on applying Sharia Law to the new Somali constitution planned for July 2009 in Malaysia;
- Establish a website on the constitution making process to keep diaspora communities and Somalis inside the country informed
- Establish working relationships with the local media to provide coverage of town hall meetings and other outreach events.

¶6. Minister Mohamed outlined his Ministry's needs and asked for donor assistance. The most urgent was for additional technical expertise in all areas to assist the constitutional development process.

Independent Federal Constitutional Committee

¶7. The Ministry and the IFCC are supposed to be working as equal partners in the constitutional-drafting process. The IFCC has enjoyed significant support by international partners. However, it is still in Nairobi and needs to return to Mogadishu. (Note: Once the TFG provides offices for the IFCC in Mogadishu, the members are interested in returning to Somalia. End note.) Additionally, the IFCC must be reconstituted to include members from the Alliance for the Re-liberation of Somalia (ARS). The additional ARS members have not yet been indentified, but all agree that they should be experienced in constitutional affairs and contribute to the gender balance of the Commission.

Constitutional Consortium
Advocates Flexibility

¶8. The Constitutional Consortium, comprising the donors and implementing partners for the constitution drafting process, is chaired by UNPOS with the UN Development Program (UNDP) as its

secretariat. The Somalis in the consortium believe that the process should not be locked into "traditional Western oriented legal boxes" and should encourage imagination and build upon unique Somali traditions. Public consultation is very important, but the limitations and challenges must be acknowledged, they said. The result of this constitution-drafting process could then be revisited within a specified time (five to ten years) for review. This provision will give opportunity to those that were not consulted initially, because of the security situation and the challenges to public participation.

¶9. Key NGOs supporting the process include the National Democratic Institute (NDI) and Interpeace (both funded by the U.S.) and COSPE, an Italian NGO. Technical support to the consortium is provided by a Somali constitutional expert from the diaspora, Mohammad Osman Jawari, and two other international constitutional experts, Prof. Yash Pal Ghai and Jill Cottrell. The Minister of Constitutional Affairs requested that a representative of his ministry have regular representation in the Consortium.

¶10. The activities of the Consortium are supported through donor funds. In FY 2008 and FY 2009, USAID will provide \$2,500,000 through NDI and UNDP for technical assistance to the IFCC and to draft the constitutional referendum law, and a civic education and public consultation campaign that gives citizens an opportunity to discuss and provide input into contentious constitutional questions.

Comment

¶11. Minister Mohamed has grand ambitions for the constitutional-drafting process, many of which are contingent on a relatively stable security situation. For example, grassroots outreach into areas not controlled by the TFG will be difficult, if not impossible. At the same time, creating opportunities for discussion and debate about the constitution and the future of

NAIROBI 00001348 003 OF 003

Somalia might allow communities to come together in ways they never have before. It will also provide an alternative vision for Somalia than what is offered by extremist groups. Somali civil society groups certainly view the constitutional process as key in continuing the reconciliation and peace-making process begun through the Djibouti Process. While the challenges to creating a truly participatory process are many, we agree that the constitutional process potentially provides a mechanism for all Somalis to be part of this nationwide initiative.

RANNEBERGER